HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPSS No. 1087/2005

Vipendra Singh
S/o Sri Atar Singh
Vs.
State of Uttaranchal
Principal Secretary
Home Affairs

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 28.2.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1087 (SS) OF 2005

Vipendra Singh,
S/o Sri Atar Singh,
Presently posted as Sub Inspector,
Civil Police, Police Chowki,
Transport Nagar, Police Station Haldwani,
District Nainital. .....Petitioner.

Versus

1. State of Uttaranchal, through Principal Secretary, Home Affairs, Uttarnachal, Dehradun.
2. Deputy Inspector General of Police (Karmik), Dehradun, Uttaranchal.
3. Inspector General (Karmik) Dehradun, Uttarnachal.
4. Senior Superintendent of Police, Nainital.

.....Respondents.

Sri D.S. Patni, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 28.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 22.07.2005 passed by respondent no. 4 and the order dated 27.07.2005 passed by the respondent no. 3.

Brief facts giving rise to the present writ petition are that on 22nd December, 2001 an advertisement was published, in which 253 posts of Sub Inspector /Platoon Commander were advertised. In the said advertisement, the applications were required for giving 1st, 2nd and 3rd preference for civil police, local intelligence unit and Platoon Commander (PAC).

In pursuance of the aforesaid advertisement, the petitioner submitted his form and gave his first preference to Civil Police. Thereafter, the petitioner appeared in the written examination and he was declared successful on 21.04.2002 and

26.06.2002, he was called for physical examination and was declared successful in physical examination.

Subsequently, the petitioner was called for interview on 26.07.2002 and being successful, he was issued an appointment letter on 7th October, 2002 by which he was informed that he has been selected on the post of Sub-Inspector (Civil Police). On 8th November, 2002, the petitioner was issued an appointment letter for the post of Sub Inspector in Civil Police in payscale of 5500-175-9000 in accordance with Section -2 of Police Act, 1861. The appointment letter which was issued on 8th November, 2002 is quoted below:-

"उत्तरांचल पुलिस में उप निरीक्षक /प्लाटून कमाण्डर की सीधी भर्ती सत्र –2002 के अभ्यर्थी श्री विपेन्द्र सिंह पुत्र श्री अतर सिंह को उप निरीक्षक, नागरिक पुलिस के पद पर धारा–2 पुलिस एक्ट (अधिनियम 5, 1861) के अधीन वेतनमान रू0 5500–175–9000 के अन्तर्गत अस्थाई नियुक्ति प्रदान की जाती है।

2– यह नियुक्ति पूर्ण रूप से अस्थाई है और बिना पूर्व सूचना के समाप्त की जा सकती है।

3– श्री विपेन्द्र सिंह को अस्थाई रूप से प्रशिक्षण अवधि हेतु जनपद देहरादून में नियुक्त किया जाता है। प्रशिक्षण पूर्ण होने के पश्चात इनहे अन्य जनपद में नियुक्त करने सम्बन्धी आदेश अलग से जारी किये जायेंगें।"

The petitioner, thereafter, was sent for training for Civil Police at Police Training College, IInd Moradabad for ten months. However, the training of Sub Inspector in Civil Police, Local Intelligence Unit and of Platoon Commander are conducted separately. The petitioner assumed the charge of Sub Inspector Civil Police on 30.09.2003.

The grievance of the petitioner is that the petitioner has been transferred to Platoon Commander PAC vide order dated 27th July, 2005

A counter affidavit has been filed by the State, where in paragraph (xv), it has been stated as under:-

"*(xv) That the C.B.I. has further found that the over all marks of Vipendra Singh were increased by 15 marks in the final select list and if the same had not illegally been granted to him he would have been selected against the post of Platoon Commander (P.A.C.) not to the post of Sub Inspector (Civil Police).*"

A perusal of the counter affidavit as well as the fact that the marks were increased by 15 marks in the final select list and therefore, the petitioner is being sent to the Civil Police, has been done without giving any opportunity to the petitioner.

The grievance of the petitioner is that despite of option given for civil police, further, in departmental inquiry, no opportunity was given to the petitioner and as such the orders dated 22.07.2005 and 27.07.2005 cannot be allowed to sustain.

However, since the order passed without giving any opportunity to the petitioner, therefore, the order deserves to be set aside.

In the case of ***Menka Gandhi v. Union of India, (1978) 1 Supreme Court Cases page 248,*** the Apex Court held as under:-

> *"It is well established that even where there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principal was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei in the following words:*

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed: it need not be shown to the superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is basic concept of the rule of law and importance; thereof transcends the significance of a decision in any particular case.

In England, the rule was thus expressed by Byles, J. In Cooper v. Wandsworth Board of Works.

The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?" And the same question was put to Eve also."

In view of the aforesaid fact, the orders dated 22.07.2005 and 27.07.2005 are set aside.

The matter is sent back to the Inspector General of Police (Karmik) / respondent no. 3, who shall pass a suitable order

giving joining to the petitioner to the Civil Police at Haldwani. However, it will be open for the respondent no. 4 to pass the orders with regard to the joining of the petitioner at Civil Police after hearing the petitioner.

In view of the above, the orders dated 22.07.2005 and 27.07.2005 shall be subject to the final order passed by the appropriate authority after hearing the petitioner.

Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

28.02.2006
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